IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Petition No. 956 of 2005

Bhagwat Singh S/o Ram Singh
R/o Village Bhainsadgaon,
P.S. Someshwar, Distt. Almora.

.....Applicant

Versus

1. State of Uttaranchal
2. The Chief Judicial Magistrate, Almora.

.....Respondents.

Mr.A.D. Tripathi, Advocate for the applicant.
Mr. Lalit Verma, Assstt. Govt. Advocate for the State.

Hon'ble Prafulla, C. Pant, J.

Heard learned counsel for the parties.

2. By means of this petition moved under Section 482 of the Code of Criminal Procedure, 1973, the applicant/ petitioner has sought release of the case property (300 quintals of wooedn 'Gullias' of Pine tree) of criminal case No. 919 of 1998; State Vs. Bhagwat Singh, under Section 379, 411 of Indian Penal Code.

3. From the perusal of the papers on record. it appears that the petitioner was an accused in aforesaid criminal case No. 919 of 1998, and, after trial he was acquitted of the charge of offences punishable under Section 379, 411 of I.P.C. and that of Section 26 of the Forest Act. The order dated 02.06.1999, passed in aforesaid case shows that while acquitting the accused, the trial court directed that the case

property recovered shall be confiscated in favour of the State. It is not disputed that said order has become final.

4) The petitioner appears to have moved an application for release 350 quintals of 'Gullias' of Pine tree, the case property of said case, in respect of which his application was rejected by the Chief Judicial Magistrate, Almora (the trial court) vide its order dated 25.10.2005, against which this petition has been filed.

5) After hearing the parties and going through the papers on record, the petition for release of case property by the accused (present petitioner) appears to be misconceived. The judgment and order dated 02.06.1999, passed in criminal case No. 919 of 1998 shows that the defense case of the accused was that the case property was not recovered form him. The trial court after assessing the prosecution evidence giving him benefit of doubt acquitted the accused. Since, it was not the case of the petitioner that the case property belong to him or recovered from him and this Court cannot ignore the facts that the case property was directed to be confiscated in favour of the State by the trial court and said order has become final, the present petition appears to be misconceived. This Court is of the view that there is no merit in the petition.

6) Accordingly, the petition under Section 482 of the Code of Criminal Procedure, 1973 is dismissed.

(Prafulla C. Pant, J.)

Dt. 13th September, 2006
H.Negi